

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2006 FEB 7 AM 8 20

MICROBRIGHTFIELD, INC.
Plaintiff

v.

PEERLESS INSURANCE COMPANY
Defendant

*
*
*
*
*
*
*

CLERK
BY W
DEPUTY CLERK
Civil Action No. 2:05-cv-207

**DEFENDANT PEERLESS INSURANCE COMPANY'S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

NOW COMES the Defendant, PEERLESS INSURANCE COMPANY, by and through counsel, HAYES & WINDISH, and pursuant to Local Rule 7.1(c)(1), hereby submits the within STATEMENT OF UNDISPUTED MATERIAL FACTS in support of its Motion for Summary Judgment.

1. Peerless Insurance Company issued policy no. CBP9337265, including all policy forms and endorsements, to Plaintiff MicroBrightField, Inc. (listed on the declarations page as "MICROBRIGHTFIELD INC"), with effective dates of coverage from August 1, 2001 through August 1, 2002. See policy, attached hereto as Exhibit A; see also Plaintiff's Responses to Defendant's Requests to Admit to Plaintiff, attached hereto as Exhibit F.

2. Peerless Insurance Company issued policy no. CBP9337265, including all policy forms and endorsements, to Plaintiff MicroBrightField, Inc. (listed on the declarations page as "MICROBRIGHTFIELD INC"), with effective dates of coverage from August 1, 2002 through August 1, 2003. See policy, attached hereto as Exhibit B; see also Exhibit F.

3. Peerless Insurance Company issued policy no. CBP9337265, including all policy forms and endorsements, to Plaintiff MicroBrightField, Inc. (listed on the declarations page as

"MICROBRIGHTFIELD INC"), with effective dates of coverage from August 1, 2003 through August 1, 2004. See policy, attached hereto as Exhibit C; see also Exhibit F.

4. Peerless Insurance Company issued policy no. CBP9337265, including all policy forms and endorsements, to Plaintiff MicroBrightField, Inc. (listed on the declarations page as "MICROBRIGHTFIELD INC"), with effective dates of coverage from August 1, 2004 through August 1, 2005. See policy, attached hereto as Exhibit D; see also Exhibit F.

5. In a complaint filed in federal district court in Chicago on August 20, 2004, MBF was sued by competitor Bacus Laboratories for patent infringement (a textbook publisher was also sued). That action was styled as *Bacus Laboratories, Inc. v. MicroBrightField, Inc. and Lippincott, Williams and Wilkins, Inc.*, United States District Court for the Northern District of Illinois, Eastern Division, Case No. 04C5493. See complaint, attached hereto as Exhibit E.

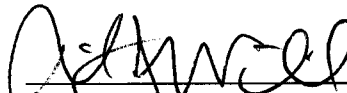
6. The underlying action raised four counts of Infringement of Patent's held by Bacus Research Laboratories, Inc., for patents: 6,674,881 entitled "Method and Apparatus for Internet, Intranet, and Local Viewing of Virtual Microscope Slides"; 6,522,744 entitled "Method and Apparatus for Creating a Virtual Microscope Slide"; 6,272,235 entitled "Method and Apparatus for Creating a Virtual Microscope Slides"; and 6,396,941 entitled "Method and Apparatus for Internet, Intranet, and Local Viewing of Virtual Microscope Slides." See Exhibit E.


7. The underlying action sought a judgment that the aforementioned patents are "valid, enforceable and infringed" by Microbrightfield's actions; preliminary and permanent injunction enjoining further infringement; and award of damages arising from the infringement; treble damages; and attorney's fees, costs and expenses. *Id.*

8. The *Bacus* complaint sought injunctive relief, compensatory and punitive

damages, and attorneys' fees; *prima facie* patent infringement was alleged in that: (a) Bacus owned a patent; (b) MBF has been and is willfully infringing upon said patent by making, using, offering to sell, and/or selling its infringing product to others, by inducing others to infringe, and by contributing to the infringement by others; and, (c) Bacus is being damaged by the infringement. Id.

DATED at Woodstock, Vermont this 6TH day of February, 2006.


Richard Windish, Esq.


Bonnie Shappy, Esq.

HAYES & WINDISH

45 Pleasant Street

Woodstock, Vermont 05091

(802) 457-2123, fax 457-3656

rwindish@hayes-windish.com

bshappy@hayes-windish.com

ATTORNEYS FOR DEFENDANT
PEERLESS INSURANCE COMPANY

cc: R. Bradford Fawley, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MICROBRIGHTFIELD, INC.,
Plaintiff/Counterclaim Defendant

v.

PEERLESS INSURANCE COMPANY,
Defendant/Counterclaim Plaintiff

*
*
*
*
*
*
*

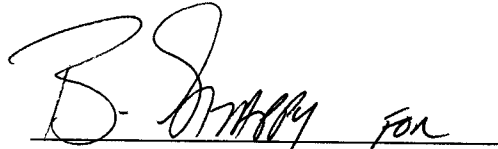
Civil Action No. 2:05-CV-207

CERTIFICATE OF SERVICE

I, Richard Windish, Esq., of the law firm of Hayes & Windish, attorneys for Defendant/Counterclaim Plaintiff PEERLESS INSURANCE COMPANY, hereby certify that on the 6th day of February, 2006, I served a copy of the attached Defendant Peerless Insurance Company's Motion for Summary Judgment and Defendant Peerless Insurance Company's Statement of Undisputed Material Facts on the below identified counsel of record, by depositing a copy thereof in a securely sealed, duly postpaid and properly addressed envelope in a depository under the exclusive care of the United States Postal Service in Woodstock, Vermont:

R. Bradford Fawley, Esq.
DOWNS RACHLIN MARTIN PLLC
80 Linden Street
P.O. Box 9
Brattleboro, VT 05302-0009

DATED at Woodstock, Vermont this 6th day of February, 2006.



Richard Windish, Esq.

HAYES & WINDISH

45 Pleasant Street
Woodstock, Vermont 05091
(802) 457-2123, fax 457-3656
rwindish@hayes-windish.com

ATTORNEYS FOR DEFENDANT/
COUNTERCLAIM PLAINTIFF
PEERLESS INSURANCE COMPANY